

Deficiency Progress Report – Update 1

Status Report Submitted: May 13, 2008

CUPA Name: DTSC Imperial County

Evaluation Date: December 12 and 13, 2007

State Evaluation Team:

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Corrected Deficiencies: [4, 5, 9](#)

Next Progress Report (Update 2) Due: [August 13, 2008](#)

[Please update the deficiencies below that remain outstanding.](#)

1. **Deficiency:** The CUPA is not meeting the mandated inspection frequency for the Hazardous Materials Business Plan (HMBP) program of one inspection every three years. This includes agricultural handlers subject to the business plan program.

Preliminary Corrective Actions: By June 30, 2008, and annually thereafter, the CUPA will inspect at least one third (33% per year) of its HMBP facilities.

By March 30, 2008, develop a plan to meet the inspection frequency for the HMBP program. Submit the plan along with the CUPA's first deficiency status report.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA has inventoried 670 facilities within Imperial County that are regulated under the HMBP. The DTSC Imperial CUPA has already inspected 101 facilities as identified by the CUPA Auditors during FY06/07. The DTSC Imperial CUPA has calculated that approximately 233 facilities will need to be inspected annually over each of the next two and a half fiscal years to comply with this corrective action. Therefore, staff is already assigned to complete 130 inspections by June 30, 2008. The CUPA Manager will conduct weekly Unit meetings to monitor the inspections being performed to ensure progress is occurring to achieve this milestone. During FY 08/09 and 09/10 staff will be assigned at least 233 facilities each year to be inspected. The quantity of scheduled inspections can vary as the inventory of regulated facilities changes annually.

Currently, at least 63 inspections have been conducted as of this report.

The DTSC Imperial CUPA reject the notion that agricultural handlers are not being inspected with the frequency as the other industries. Therefore, we will continue in the manner of assigning our inspections based on impartiality to the industries within Imperial County.

Cal/EPA's 1st Response: Refer to OES's response.

- **OES's Response:** This deficiency appears to be on its way to being resolved. The rate of inspections, if held to the proposed corrective action plan, would appear to be in-line with the state mandated time frame.

On the next progress report, please include the total number of HMBP routine inspections performed for FY 07/08.

CUPA's 2nd Update: Enter Update Here

2. **Deficiency:** The CUPA is not conducting inspections with a frequency consistent with its Inspection and Enforcement Plan. Specifically, the CUPA is not meeting its scheduled inspection frequency for its hazardous waste generator (HWG) program of one inspection every three years.

Preliminary Corrective Actions: By June 30, 2008, and annually thereafter, the CUPA will inspect at least one third (33% per year) of its HWG facilities.

By March 30, 2008, develop a plan to meet the inspection frequency for the HWG program. Submit the plan along with the CUPA's first deficiency status report.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA has inventoried 562 facilities within Imperial County that are regulated under the HWG program element. The DTSC Imperial CUPA has already inspected 101 facilities as identified by the CUPA Auditors during FY06/07. The DTSC Imperial CUPA has calculated that approximately 187 facilities will need to be inspected annually over each of the next three years to comply with this corrective action. Therefore, staff is already assigned to complete 86 HWG inspections by June 30, 2008. The CUPA Manager will conduct weekly Unit meetings to monitor the inspections being performed to ensure the milestone is being achieved. The CUPA Manager will also ensure tracking forms are completed. During FY 08/09 and 09/10 staff will be assigned at least 187 facilities each year to be inspected. The DTSC Imperial CUPA estimates 80% of the HWG are also HMBP.

Currently, at least 50 inspections have been conducted as of this report.

Cal/EPA's 1st Response: The CUPA has developed an action plan that, if followed, will meet the CUPA's scheduled inspection frequency for HWG facilities.

On the next progress report, please include the total number of HWG routine inspections performed for FY 07/08.

CUPA's 2nd Update: Enter Update Here

3. **Deficiency:** The CUPA is not meeting the mandated inspection frequency for the CalARP program of one inspection every three years.

Preliminary Corrective Actions: By June 30, 2008, and annually thereafter, the CUPA will inspect at least one third (33% per year) of its CalARP facilities.

By March 30, 2008, develop a plan to meet the inspection frequency for the CalARP program. Submit the plan along with the CUPA's first deficiency status report.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA has inventoried 37 facilities within Imperial County that are regulated under the CalARP program. The DTSC Imperial CUPA has already inspected 2 facilities. The DTSC Imperial CUPA has calculated that approximately 12 facilities will need to be inspected annually over each of the next two and a half fiscal years to comply with this corrective action. Therefore, staff is already assigned to complete 10 additional CalARP inspections by June 30, 2008. However, it is reasonable to expect only four inspections will be completed by June 30, 2008. Additional staff is being trained to increase the number of CalARP inspections. The CUPA Manager will conduct weekly Unit meetings to monitor the progress. Any scheduled CalARP inspection that is scheduled during FY07/08 that is not completed, will be a priority for the following fiscal year. During FY 08/09 and 09/10 at least 12 facilities each year will be inspected. The CUPA Manager will work with staff and additional resources to have all 37 facilities inspected by the end of FY09/10.

Currently, 2 inspections have been conducted as of this report.

Cal/EPA's 1st Response: Refer to OES's response.

- **OES's Response:** It seems the rates of inspections for CalARP facilities will not be accomplished within the upcoming year. The CUPA has recognized this and is in the process of training staff to accomplish the state mandated inspection frequencies.

On the next progress report, please include the total number of CalARP routine inspections performed for FY 07/08.

CUPA's 2nd Update: Enter Update Here

4. **Deficiency:** The CUPA is not documenting violations in a manner consistent with the definitions of minor, Class II or Class I as provided in law and regulation.

Preliminary Corrective Actions: By January 13, 2008, the CUPA shall develop a plan of action to ensure that staff is trained and familiar with the statutory and regulatory definitions for the different hazardous waste violation classifications, and is documenting them accordingly. The plan of action should also involve training in the violation classification guidance document.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA Manager has issued to staff a copy of section 25110.8.5 (Class I) and 25117.6 and 25404 (c) (3) (Minor) Health and Safety Code for staff to be familiar with the statutory requirements in defining violations. Additionally, staff has been given a copy of the "VIOLATION CLASSIFICATION GUIDANCE FOR UNIFIED PROGRAM AGENCIES" July 11, 2006, with instruction given by the CUPA Manager during regular Unit meetings. The CUPA Manager, who has 22 years of experience in assessing violations, will also provide OJT as the CUPA Manager assists staff during CUPA inspections. On May 9, 2008, CUPA staff and CUPA Manager received three hour class training on classifying Class I, II and Minor violations from Roberto Kou, Supervising Hazardous Substance Scientist, DTSC Chatsworth Enforcement and Emergency Response Program. The CUPA Manager will review the tracking forms provided by staff to ensure adherence to the standards stated above and the training received by Kou. Annual refresher training of staff and the CUPA Manager may be necessary as a result of the tracking of staff's violation determinations.

Cal/EPA's 1st Response: Refer to DTSC evaluator's response.

- **DTSC's Response:** DTSC acknowledges the steps taken and progress the CUPA has made in ensuring their staff is appropriately trained. Cal/EPA and DTSC considers this deficiency corrected.

5. **Deficiency:** The CUPA is not fully implementing its Inspection and Enforcement Program and Plan.

Preliminary Corrective Actions: By January 13, 2008, the CUPA shall develop a plan of action to fully implement its Inspection and Enforcement Program and Plan.

CUPA's 1st Update (May 13, 2008): The implementation of the Inspection and Enforcement Program Plan (Plan) as described in the "Application for Imperial County Unified Program Agency", July 2004, is generally accepted as the process the DTSC Imperial CUPA will employ to ensure compliance with the six program elements. However, because Imperial County government has not regulated these facilities dating to the inception of the statutes for some of the program elements, the DTSC Imperial CUPA reserves the flexibility to ensure compliance on Class II violations without taking formal enforcement, should compliance not be met within initial prescribed time limits. This would also include the need to elevate minor violations to Class II if due dates were not met. Specifically the DTSC Imperial CUPA would undertake additional verbal and written efforts to get companies not in compliance to comply without taking formal enforcement when repeated non-compliance occurs. The DTSC Imperial CUPA prefers to continue dialogue with the company until it is the DTSC Imperial CUPA's determination on a case-by-case basis with documentation, that there is no reasonable alternative and hence the enforcement will be taken. The repeated documented efforts towards achieving compliance by the DTSC Imperial CUPA staff would be used as the evidence supporting the enforcement taken. Enforcement will occur for Class I violations.

At least five pending enforcement actions resulting from inspections and complaint investigations during 2007 will be transferred to Roberto Kou, Supervising HSS, Chatsworth EERP. Kou has over 20 years of experience in enforcing the Hazardous Waste Control Law (HWCL). The five cases are from the HWCL. Kou, in close cooperation with the CUPA Manager will follow the AEO process. CUPA staff will ensure compliance to the resulting Consent Agreement.

The CUPA Manager will ensure adherence to the Plan through weekly Unit meetings and monitoring the documentation provided by staff at the conclusion of inspections, complaint investigations and enforcement actions. Furthermore, the CUPA Manager will provide oversight on the issuance of Return To Compliance notifications to the regulated community once compliance has been achieved.

The DTSC Imperial CUPA will annually revise the Inspection and Enforcement Program Plan whenever significant changes in procedures described above occur.

Cal/EPA's 1st Response: Refer to DTSC evaluator's response.

- **DTSC's Response:** DTSC recognizes that the CUPA is now implementing their Inspection and Enforcement Plan through the aid of Roberto Kou, following the AEO process and direct CUPA manager involvement. Cal/EPA and DTSC considers this deficiency corrected.

6. **Deficiency:** The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification.

Preliminary Corrective Actions: By January 13, 2008, the CUPA shall ensure that facilities who are cited for minor violations during hazardous waste inspections have either submitted a Return to Compliance certification or been followed up with within the required corrective action date.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA staff has pursued compliance to past cited violations against companies and issued Return To Compliance letters or otherwise has received signed certifications of compliance from facilities, once compliance to the violations has occurred. To ensure a Return to Compliance certification has been received or determine what form of further staff effort is necessary to compel non-compliant facilities into compliance, weekly Unit meetings tracking the progress of inspections and compliance is occurring. Because of the inherent difficulties of a new program, interim measures are being used, such as longer time periods to achieve compliance, and more instruction to facilities on how to achieve compliance. This is occurring while staff strives to meet annual inspection commitments.

Cal/EPA's 1st Response: Refer to DTSC evaluator's response.

- **DTSC's Response:** DTSC understands that the CUPA is now using weekly meetings to track Return to Compliance. DTSC would like to know what exactly is being tracked during these meetings to ensure that the facilities cited for violations have in fact returned to compliance. That is, has there been an increase in facilities submitting Return to Compliance certifications or more follow-up inspections as a result of these meetings? Any documentation from these meetings supporting increased compliance would be helpful in answering this question. Cal/EPA and DTSC considers this deficiency still outstanding.

CUPA's 2nd Update: Enter Update Here

7. **Deficiency:** CUPA is not ensuring that business plans are being reviewed for completeness and accuracy.

Preliminary Corrective Actions: By March 30 2008, the CUPA must submit an action plan that will ensure that business plans are being reviewed for completeness and accuracy.

CUPA's 1st Update (May 13, 2008): The Business Plans were being reviewed for completeness and accuracy by staff as they were received by the DTSC Imperial CUPA office and as a result of the inspector's conducting CUPA

inspections. However, more Business Plans were being received through mail-in than staff was able to review for completeness. In an effort to minimize this deficiency the CUPA Manager will be securing by May 30, 2008, additional personnel to review submitted Business Plans not yet reviewed. The person(s) identified to conduct the review of Business Plans for completeness will be given in-house training on the Business Plan statutes and regulations by the CUPA Manager before they are allowed to conduct their reviews. The CUPA Manager will track the progress of the staff and ensure compliance is documented.

Cal/EPA's 1st Response: Refer to OES's response.

- **OES's Response:** Adding additional staff tasked with the responsibility of reviewing business plan material is progress towards satisfying this deficiency.

On the next progress report, submit an update on the progress towards correction of this deficiency.

CUPA's 2nd Update: Enter Update Here

8. **Deficiency:** CUPA has not reviewed or updated their area plan within the last 36 months.

Preliminary Corrective Actions: By December 31, 2008, the CUPA shall submit an area plan update to the Governors Office of Emergency Services.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA will create an agenda and meet with County agencies, since the County of Imperial would be the entity to apply for the HMEP grant. The DTSC Imperial CUPA has drafted a letter of interest to the OES LEPC Region 6 requesting a HMEP grant. This one year grant occurs from October 2008 through September 2009 and will be monitored by the DTSC Imperial CUPA.

Cal/EPA's 1st Response: Refer to OES's response.

- **OES's Response:** An HMBP grant will aid in the update and review of the CUPA's Area Plan. The CUPA will report any progress in the next progress report on this matter.

CUPA's 2nd Update: Enter Update Here

9. **Deficiency:** CUPA is not forwarding the data collected with other responsible agencies in a format easily interpreted by those agencies.

Preliminary Corrective Actions: None

Cal/EPA's 1st Response: This deficiency was corrected before completion of the initial report.

- 10. Deficiency:** Emergency Response Plans/Procedures are being submitted without all of the minimum elements necessary. Mitigation, prevention, or abatement of hazards to person's, property or environment, and identification of areas of the facility and mechanical or other systems that require immediate inspection or isolation because of the vulnerability to earthquake related ground motion are missing from submitted plans.

Preliminary Corrective Actions: By March 30, 2008 the CUPA shall submit an action plan to include all elements of the emergency response plans/procedures.

CUPA's 1st Update (May 13, 2008): The DTSC Imperial CUPA will begin the process of revising the Business Plan application provided to facilities to require the new companies to establish a written procedure, scaled appropriately for the size and nature of the business, that will mitigate, prevent, or abate hazards to person's, property or environment, and identify areas of the facility and mechanical or other systems that require immediate inspection or isolation because of the vulnerability to earthquake related ground motion. By May 20, 2008, the revised Business Plan application will be available to the public or for review.

Business Plans that have already been submitted but not approved will be reviewed by CUPA staff identified in #7 above. The staff will review the Business Plan to include emergency procedures in the event of an earthquake. For those facilities that had previously been determined to be in compliance with the Business Plan or those facilities still to be inspected, they will receive a letter requesting them to revise their Business Plan to address this requirement. The letter will be submitted to the regulated community by June 6, 2008. The letter will be with inspectors as they conduct their inspections and provided to current owner/operators.

Cal/EPA's 1st Response: The CUPA is making good progress toward correcting this deficiency.

Along with the next progress report, please fax or email to Cal/EPA a copy of the CUPA's revised Business Plan application and the Business Plan request letter.

CUPA's 2nd Update: Enter Update Here